

**Testimony before the Senate Committee on Commerce, Science, and Transportation  
Full Committee Hearing on Election Reform**

**Presented by The Honorable John T. Willis  
Secretary of State, State of Maryland  
May 8, 2001**

Mr. Chairman, Senator Hollings, members of the Senate Governmental Affairs Committee, thank you for the invitation to appear before you to discuss the most important relationship under our constitutional structure of government – the relationship between individual citizens and their representatives. In Federalist Paper No. 22, Alexander Hamilton closed with the observation:

“The fabric of American empire ought to rest on the solid basis of THE CONSENT OF THE PEOPLE. The streams of national power ought to flow immediately from that pure, original foundation of all legitimate authority.”

The 2000 presidential election highlighted weaknesses in the election process which threaten the purity of the flow in the political stream from the people to their governmental leaders. It is, therefore, not only appropriate, but also imperative, that this Senate Committee, and other legislative bodies at all levels of government, take necessary, meaningful, and immediate action to guard against further deterioration in the quality of the relationship between citizens and their government.

The right to vote is the essence and foundation of the constitutional framework of our federal and state governments in the United States. The recognition of the sanctity and power of the right to vote requires that its exercise not be diminished or impaired. Accordingly, it is mandatory that all possible steps be taken to guarantee that every eligible citizen in the United States has the unfettered opportunity to vote and that the mechanics of voting and election procedures facilitate – not frustrate – the free exercise of the right to vote.

The conduct of elections is a complex enterprise. In the 2000 presidential election, more than

100 million voters cast ballots on over 700,000 voting machines in over 200,000 polling places throughout the country that were managed by approximately 22,000 election officials and 1.4 million part-time election workers. On election day, 1,940,089 Marylanders voted in 1,666 precincts at 1,459 polling places throughout the State, and 96,366 absentee ballots were counted within several days thereafter. Hundreds of state and county election officials, along with over 17,000 election judges stationed at the polling places, were responsible for the administration of the recent election in Maryland.

Despite the size and scope of election activity, and the important consequences of elections for citizens, the infrastructure for the administration of elections lags well behind the support systems for routine personal, commercial, governmental, and social interaction in our nation and respective states. Billions of transactions utilizing modern technology are conducted every day by U.S. citizens with a high degree of confidence and user satisfaction. Citizen-voters should have the same level of confidence and satisfaction in the accuracy and capability of the systems and equipment used to exercise the most fundamental right – **the right to vote**. The technologies used for obtaining money at the ATM, pumping gas at the neighborhood service station, making airplane reservations, or checking out of the supermarket should be available for exercising the most important and fundamental right in our country.

Elections in this country should be administered by comprehensive election management systems which would provide electronic linkage through all phases of election administration – from voter registration before the election to the voting machines in polling places on election day and from the initial tabulation of results to the official certification of the election by the appropriate reviewing entity. Assisted by adequate resources and advanced technology, a comprehensive election management system can ensure accurate election outcomes and enhance public confidence in the election process.

A central component of the current election process is voter registration which the U.S. Congress has long recognized in the passage of landmark legislation such as the 1965 Voting Rights Act, as amended, the 1984 Voting Accessibility for the Elderly and Handicapped Act, the 1986 Uniformed and Overseas Citizens Absentee Voting Act, and the 1993 National Voter Registration Act (the “Motor Voter” Act). Modern technology can be employed to ensure compliance with these federal laws as well as make voter registration easier and more convenient for the citizen-voter. On-line access to voter registration information and applications, expanded opportunity to register at schools, government offices and public places, and electronic transfer of registration between jurisdictions can be securely accomplished. Election administrators can also benefit from greater use of technology in the voter registration process with improved databases, verification of information with non-election administrative agencies, and the sharing of information across jurisdictional lines.

For example, the State of Maryland began constructing in 1998 a statewide voter registration system as part of its comprehensive election management system. It is expected that the system will be functional by December 2001 and will allow real-time access to voter registration rolls by county and state election officials. This capability will ensure that a voter is not registered in more than one jurisdiction, interface with other governmental agencies in Maryland (*e.g.*, the Motor Vehicle Administration and the court system), and enable Maryland to cross reference its voter registration database with our neighboring states. With additional resources, Maryland envisions having a computer in each polling place with access to the statewide voter registration system to ensure that the voter is at the correct polling place and to verify the signature on the voter authority card signed at the polling place with the signature on the voter registration application originally submitted by the voter.

During the recently concluded session of the Maryland General Assembly, legislation was adopted in response to reports of Maryland citizens being unable to vote after completing a change of address form at Maryland's Motor Vehicle Administration. Maryland Senate Bill 740 and Maryland House Bill 1458 will simplify the voter registration process for a voter moving from one jurisdiction to another within Maryland by providing for a simple transfer of registration rather than a "drop and add" process. In addition, new statutory and administrative provisions will streamline the transfer of voter information between the Motor Vehicle Administration and the Maryland State Board of Elections.

In addition to needed improvements in the voter registration process, the 2000 Presidential Election dramatically highlighted the importance of the voting system technology used to cast and count votes. Maryland's Governor Parris N. Glendening appointed a Special Committee on Voting Systems and Elections Procedures in Maryland on December 4, 2000, before the 2000 Presidential Election was judicially determined, to evaluate the voting systems and election procedures in Maryland, review existing standards for recounts and contested elections, recommend appropriate funding levels to provide Maryland with accurate, convenient and reliable voting systems, and recommend statutory and regulatory changes to ensure full and fair elections. The full 124 page Report and Recommendations of the Special Committee can be accessed from the Office of the Secretary of State's website at <http://www.sos.state.md.us>.

As a result of its two months of research, study and work, the Special Committee confirmed that the type of voting system used by a jurisdiction *does* make a difference in the accuracy of the vote count and that election procedures *do* affect the quality of the election results. During the past decade, nineteen Maryland jurisdictions replaced mechanical lever and punchcard voting systems with optical scan or Direct Recording Electronic (electronic touchscreen ballot) voting systems. The change to technologically more advanced voting systems has been accompanied by a significant reduction in the percentage of overvotes and

undervotes for the highest office on the ballot. See Exhibits 1 and 2 showing the percentage and number of “no votes” for President in Maryland subdivisions and by voting system from 1980-2000.<sup>1</sup>

With 2,036,455 voters participating in the 2000 presidential election in Maryland, only 10,553 voters were not recorded as casting a vote for President yielding a low percentage of unrecorded votes in sharp contrast to the experiences in other states. This computes to a 0.518% percent of “no vote” for the 2000 presidential election, a nearly two-thirds reduction since the last presidential election without an incumbent candidate (1988). It should be noted that at the polling place, the percent of “no vote” for President in Maryland in the 2000 election was 0.450%. The rate of “no votes” for absentee ballots is generally higher in each election and increases the rate of “no votes” for combined county totals. Modern voting systems, specifically the precinct count optical scan and Direct Recording Electronic voting systems, can prevent the voter from “overvoting” a ballot at the polling place and, in Maryland, have proven to be accurate in vote counting. Maryland’s current and past experiences with voting systems<sup>2</sup> parallels the experiences around the country as described hereinbelow by the type of voting system used:

1. The Votomatic stylus punchcard voting system, when used in Maryland from 1980-1992, failed to capture the voter’s intent accurately as evidenced by jurisdictions using these systems consistently having substantially higher percentages of “no votes” for President than the statewide average.

2. The central count Datavote punchcard system was used in the 2000 Presidential Election at the polling places in Montgomery County, Maryland, a large, wealthy, highly educated suburban county, and for absentee ballots in Allegany County, a Western Appalachian mountain region county with below statewide average education and income indices. While Montgomery County represented 18.40% of the State’s total voter turnout, this upscale jurisdiction accounted for 27.12% of the “no votes” in Maryland and reported 2,565 overvotes (almost twice as many as the rest of the State combined). In Allegany County, 9.9% of the absentee ballots were not counted as having a proper vote for President, more than twice the rate of any other jurisdiction and five times the state average.

3. Although mechanical lever machines prevent overvotes, the machines are no longer manufactured, replacement parts and service are difficult to obtain, and reviews of precinct level data

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<sup>1</sup> A “no vote” for President represents the number of voters not recorded as voting for President. A “no vote” includes voters who deliberately did not cast a vote for President, who voted for more than one for President, or who may not have had their vote accurately counted by the voting system utilized by the voter.

<sup>2</sup> See pp. 19-28 of the Report and Recommendations of the Special Committee on Voting Systems and Elections Procedures in Maryland (February 2001) for a more complete evaluation of the voting systems used in Maryland.

shows substantial and sporadic variances among precincts in “no votes” cast in each election and for different elections. See Exhibit 3 showing the four precincts in the last three presidential elections that recorded the most number of “no votes” in Prince George’s County, Maryland.

4. While precinct count optical scan voting systems have proven generally accurate in counting ballots in Maryland, voter intent can still be difficult to determine and the potential for preventable voter error exists. Exhibit 4 contains examples of optical scan ballots where the voter intent is clear but the optical scan voting system would not count some votes cast because the voter’s marks do not fall within the circle. Also, the ballots can be rejected by the optical scan voting machine as an unmarked ballot or accepted without being tabulated if the voter uses a writing instrument other than the marking pen provided at the polling place. Finally, optical scan voting systems are not accessible to all individuals with disabilities and do not allow visually impaired individuals to cast a secret ballot.

5. Direct Recording Electronic voting systems (“DRE”), the most modern voting equipment available, provide voters with immediate visual feedback, can prevent overvotes, are capable of creating a paper trail (if necessary for a recount), and can handle the specialized needs of the voting population, particularly individuals with disabilities and non-English speaking voters. In Baltimore City, the transition from mechanical lever machines to AVC Advantage, a Direct Recording Electronic voting system, was successfully accomplished resulting in a reduction of the percentage of “no votes” from 1.73% in 1988 (the last comparable non-incumbent presidential election) to 0.72% in 2000. The disparities between precinct “no vote” rates in Baltimore City has been virtually eliminated with 311 precincts out of 325 having 10 or less “no votes” and with the highest number of “no votes” being 29.

In order to make reasoned correct evaluations and judgments about voting systems, equipment, and election procedures, it is important to ensure the accuracy of source data and to employ appropriate methodology. Analysis by, and action based upon, anecdotal evidence should be avoided. In my research, longitudinal studies and accounting for demographic factors (*e.g.*, education, income, and race) are essential. It is also important to capture census block and precinct level data as aggregating data at the county, state, and national level can mask substantial disparities among population groups and disguise differentiating circumstances and factors. Other problems in conducting research careful attention must be given to differences in terminology and procedures used by each of the local election officials which make adjustments necessary for accurate analysis.

Notwithstanding the comparative accuracy of Maryland’s voting systems, the Special Committee on Voting Systems and Elections Procedures in Maryland recommended a Direct Recording Electronic as the preferred voting system at the polling place and an optical scan voting system for the absentee ballot voting system. The Maryland General Assembly recently adopted legislation authorizing the State Board of Elections to select a uniform statewide voting system, and the Governor included funds in a legislatively approved supplemental budget to share the cost of new voting systems equally with county governments.

The selection of electronic voting systems must be preceded, and accompanied at every step of implementation, by thorough testing to ensure accurate, reliable, and secure election results. Maryland and thirty-one (31) other states have included as part of the state certification process for voting systems the Voluntary Federal Voting Systems Standards developed by the Office of Election Administration and the National Association of State Election Directors. While these voluntary standards have been implemented in a majority of states, adequate resources need to be allocated to the Office of Election Administration for continuous updating of the standards as voting system technology evolves.

While the transition to new technology is inevitably resisted for a variety of reasons, employing the most advanced voting systems and equipment is consistent with our nation's history of progress and with the ultimate goal of an informed and satisfied citizen-voter. In fact, the contemporary debate over the most appropriate voting system has a clear historical analogue. As the country's population grew rapidly, and suffrage was expanded, the voting system debate in the middle of the twentieth century was between maintaining very carefully crafted rules for counting paper ballots and authorizing mechanical lever voting systems. The fundamental nature of the debate involving accuracy, security of the ballot, and ease of voter use has not changed. See Exhibit 5: "Voting Machines Vs. Paper Ballots," The Baltimore Sun, May 3, 1935, (Early Edition).

In American politics, close elections are not unusual and occur regularly at every level of government and in every state. In Maryland, the 1800 presidential election produced a tie in the State's electoral votes. In the 1904 presidential election, the difference between the leading Republican and Democratic state electors was a mere fifty-one (51) votes. Former Congressman Kweisi Mfume commenced his distinguished career with a narrow three (3) vote primary election victory in a 1979 race for City Council. Important offices at county and municipal levels of government are often closely decided and, in some recent instances, have been decided by a single vote or resulted in a tie vote. The frequent occurrence of close elections demands that the voting systems and equipment used in elections be accurate and reliable and that election procedures be open, clearly understood, and fair. In the future, there will be close elections for statewide offices, the U.S. House of Representatives, the U.S. Senate and, perhaps again, for President of the United States.

In a speech to the delegates of the Constitutional Convention in 1787 urging an end to divisiveness and in support of the proposed new governing document, Ben Franklin observed,

"Much of the strength and efficiency of any government, in procuring and securing happiness to the people, depends on *opinion*, on the general opinion of the goodness of that government, as well as of the wisdom and integrity of its governors."

Franklin's observations ring true today. The citizens' perception and opinion of their government and political leaders is based, in large part, on their level of trust in fair, open, and accurate elections. Improvements in voting systems and election procedures are therefore a crucial component

in promoting the essential relationship in our democratic form of government between actively engaged citizens and a fair, responsive government which was cherished by our nation's founders. In order to manifest the wisdom and integrity urged by Ben Franklin, a strong federal, state, and local partnership needs to be forged for election reform.

While, traditionally, elections have been funded by local government, the federal government as well as state governments should partner with counties and municipalities in the funding of the comprehensive election management systems. Members of the election community know the problems with current election administration and know how to solve them. What these hardworking and dedicated election officials need are resources to make the necessary changes to improve the administration and conduct of elections in the United States. State and local governments should not bear alone the full burden of implementation of new technologies for voter registration and voting systems. The National Association of Secretaries of State ("NASS") adopted on February 6, 2001, a useful resolution to guide federal, state, and local officials in election reform efforts. See Exhibit 6.

Accordingly, I strongly urge this Senate Committee and the United States Congress to seize the opportunity presented by the increased public awareness resulting from the confusing and uncertain 2000 Presidential Election. I encourage the federal financial support for state and local election officials and suggest an annual appropriation from the U.S. Congress to each state of \$1.00 per individual of voting age to assist in the necessary improvements of the equipment, voting systems, and procedures used in the conduct of federal, state, and local elections. Together, we can take significant, wise steps forward in assuring the integrity of the conduct of elections for all of the citizens of our country and ensure that the voice of the people is correctly and unambiguously heard.